UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,164	11/30/2001	Richard Gore	2705-702	4274

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TIV, BACKHEAN

ART UNIT	PAPER NUMBER
2151	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Office Action Summary	Application No.	Applicant(s)
		10/007,164	GORE ET AL.
		Examiner	Art Unit	
		Backhean Tiv	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *RCE 5/8/07*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some *   c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date *5/07*.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

Detailed Action

Claims 1-28 are pending. Claims 1-26 were amended on 5/8/07. Claims 27,28

are new claims. This is a response to the RCE filed on 5/8/07.

Information Disclosure Statement

The IDS filed on 5/8/07 has been considered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 13,20, 27,28 are rejected under 35 U.S.C. 103(a) as being

unpatentable over US Publication 2002/0120727 issued to Curley et al.(Curley) in view

of US Patent 6,711,137 issued to Klassen et al.(Klassen).

As per claim 1, 13, 20, Curley teaches a method for monitoring electronic

commerce transactions(para.0006), said method comprising the computer implemented

steps of: determining application test latency, by transmitting an application test from

the access point device to said network device located between the network, wherein

said application test is selected to represent a portion of said e-commerce

transactions(para.0009, 0011,0056, Fig.5); determining a time interval between

transmitting the application test and receiving a response(para.0016,0059) indicating

said application test latency on a display(fig.10A).

Curley however does not explicitly teach determining network transport latency

between a network device located between a remote customer network and another

network and an access point device located outside customer network; indicating said

network transport latency on a display.

Klassen teaches determining network transport latency between a network

device located between a remote customer network and another network and an access

point device located outside customer network(col.3, lines 18-45, col.4, lines 47-

50,col.5, lines 15-37); indicating said network transport latency on a display(Fig.6).

It would have been obvious to one ordinary skill in the art at the time of the

invention to modify the teachings of Curley to determine transport latency in a network

as taught by Klassen in order tune network performance and throughput(Klassen, col.1,

lines (10-13).

One ordinary skill in the art at the time of the invention would have been

motivated to combine the teachings of Klassen and Curley in order to provide a system

to improve network performance(Klassen, col.1, lines 7-22).

As per claim 27, the method of claim 1 wherein a network monitor software agent

and an application monitor agent used for determining the network transport latency and

the application test latency are located remotely from both the customer network and

the network device(Curely, Fig.1).

As per claim 28, Curely teaches a system comprising: one or more electronic

commerce servers for conducting transactions with a computer located outside an

enterprise network for the electronic commerce servers over a call path(Fig.1);

a network device located on the call path between the electronic commerce servers and

the computer(Fig.1, para.00136);   the network device configured to mimic a customer

interaction with the electronic commerce servers to determine current performance of

an electronic commerce application operating in the enterprise

network(para.0011,0016).

Curely however does not explicitly teach the network device configured to ping a

device located in a same network as the computer to determine latency between the

computer and the network device; and the network device to output the latency and

performance determinations.

Klassen teaches the network device configured to ping a device located in a

same network as the computer to determine latency between the computer and the

network device(col.3, lines 18-45, col.4, lines 47-50,col.5, lines 15-37); and the network

device to output the latency and performance determinations(Fig.6).

It would have been obvious to one ordinary skill in the art at the time of the

invention to modify the teachings of Curley to determine transport latency in a network

as taught by Klassen in order tune network performance and throughput(Klassen, col.1,

lines (10-13).

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Klassen and Curley in order to provide a system to improve network performance(Klassen, col.1, lines 7-22).

Claims 2,4-7, 14,16,17,21,23,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication 2002/0120727 issued to Curley et al.(Curley) in view of US Patent 6,711,137 issued to Klassen et al.(Klassen) in further view of US 6,578,077 issued to Rakoshitz et al.(Rakoshitz).

Curley in view of Klassen teaches application test latency and network transport latency(Curley, para.0016,0059, Klassen, col.3, lines 18-45) however, does not explicitly teach as per claim 2, determining an application test latency baseline that indicates an average of previously determined values of application test latency for a given day and time ; determining a network transport latency baseline that indicates an average of previously determined values of network transport latency for a given day and time.

Rakoshitz teaches determining latency baseline that indicates an average of previously determine values of latency for a given day and time   (col. 16 L36 to col. 17 L60, col. 17 L65 to col. 18 L50, col. 20 L15-41, fig. 13: clearly indicates the minimum, maximum and average on a display).

Therefore it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Curley in view of Klassen to determine

latency baseline that indicates an average of previously determine values of latency for

a given day and time as taught by Rakoshitz in order to indicate round trip time or delay

associated with a request, and/or bandwidth consumption to a network administrator for

performance monitoring and/or evaluation(Rakoshitz, col.17, line 64-col.18, line 45,

col.20, lines 15-41).

One ordinary skill in the art at the time of the invention would have been

motivated to combine the teachings of Curely, Klassen, and Rakoshitz in order to

provide a system of indicating round trip time or delay associated with a request, and/or

bandwidth consumption to a network administrator for performance monitoring and/or

evaluation(Rakoshitz, col.17, line 64-col.18, line 45, col.20, lines 15-41).

As per claim 4, Curely in view of Klassen in further view of Rakoshitz teaches

application test latency and network transport latency(Curley, para.0016,0059, Klassen,

col.3, lines 18-45) and further teaches calculating network transport latency baseline,

said network transport latency baseline indicating the lowest calculated network

transport latency during a given time period(Rakoshitz, col. 16 L36 to col. 17 L60, col.

17 L65 to col. 18 L50, col. 20 L15-41, fig. 13), ; and displaying said network transport

latency baseline(Rakoshitz, FIG.13)

Therefore it would have been obvious to a person of ordinary skilled in the art at

the time the invention was made to modify Curely in view of Klassen in further view of

Rakoshitz to calculate different transport latency and displaying latencies in order to

monitor flow of information coupled to a network of computers(Rakoshitz, col.2, lines

46-55).

One of ordinary skilled in the art would have been motivated because of the reasons as set forth in claim 2.

As per claim 5, the method of monitoring electronic commerce transactions as recited in claim 4 wherein a single graph is displayed that indicates said network transport latency, said first network transport latency baseline and said second network transport latency baseline(fig. 13 and col. 16 L36 to col. 20 L4 I: shows various components of the performance metrics).

Therefore it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Curely in view of Klassen in further view of Rakoshitz in order to display the latencies in a single graph.

One of ordinary skilled in the art would have been motivated because of the reasons as set forth in claim 2.

As per claim 6, the process of calculating an application test latency baseline, said application test latency baseline indicating the lowest calculated application test latency during a given time period and displaying said application test latency, said application test latency baseline and said application test latency unloaded baseline on the same graph (Curely, Fig. 10A, Rakoshitz, Fig.13).

Therefore it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Curely in view of Klassen in further view of Rakoshitz to calculate different application latency and displaying latencies in order to monitor flow of information coupled to a network of computers(Rakoshitz, col.2, lines 46-55).

One of ordinary skilled in the art would have been motivated because of the reasons as set forth in claim 2.

As per claim 7, the process wherein a single graph is displayed that indicates said application test latency, application test latency baseline and application test latency baseline(Curely, Fig.10A, Rakoshitz, fig. 13 and col. 16 L36 to col. 20 L4 l: shows various components of the performance metrics) .

Therefore it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Curely in view of Klassen in further view of Rakoshitz to calculate different application latency and displaying latencies and indicating the lowest calculated latency in order to monitor flow of information coupled to a network of computers(Rakoshitz, col.2, lines 46-55).

One of ordinary skilled in the art would have been motivated because of the reasons as set forth in claim 2.

As per claims 14,16,17,21,23,24 they do not teach or further define over the limitations in claims 2,4-7. Therefore, claims 14,16,17,21,23,24 are rejected for the same reasons as set forth in claims 2,4-7.

Claims 8-12,18,19,25,26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication 2002/0120727 issued to Curley et al.(Curley) in view of US Patent 6,711,137 issued to Klassen et al.(Klassen) in further view of US 6,578,077 issued to Rakoshitz et al.(Rakoshitz) in further view of US Patent 6,477,483 issued to Scarlat et al(Scarlat)

Curely in view of Klassen in further view of Rakoshitz, teaches application

latency determination and displaying of latency(Curely, Fig. 10A, Rakoshitz, Fig.13),

however does not teach as per claim 8, determining application component latency.

Scarlat teaches determining application component latency(col.5, lines 11-13).

Therefore it would have been obvious to one ordinary skill in the arts at the time

of the invention to modify the teachings of Curely in view of Klassen in further view of

Rakoshitz to determine application component latency as taught by Scarlat in order to

test the operation of web-based and other transactional servers(Scarlat, col.1, lines 5-

10).

One ordinary skill in the art would have been motivated to combine the teachings

of Curely, Klassen, Rakoshitz, and Scarlat in order to provide a system to test the

operation of web-based and other transactional servers(Scarlat, col.1, lines 5-10).

As per claims 9, the process wherein a first application component latency

baseline is determined for each of said plurality of application components(Scarlat,

col.5, lines 11-13).

As per claim 10, the process wherein a second application component latency

baseline is determined for each of said plurality of application components and wherein

said second application component latency baseline for each of said plurality of

application components is displayed (Scarlat, col.5, lines 11-13).

Therefore it would have been obvious to a person of ordinary skilled in the art at

the time the invention was made to modify Curely in view of Klassen in further view of

Rakoshitz in further view of Scarlat to calculate different applicationcomponent latency

and displaying latencies in order to monitor flow of information coupled to a network of

computers(Rakoshitz, col.2, lines 46-55).

One ordinary skill in the art at the time of the invention would have been

motivated to combine the teachings of Curely, Klassen, and Rakoshitz , Scarlat in order

to provide a system of indicating round trip time or delay associated with a request,

and/or bandwidth consumption to a network administrator for performance monitoring

and/or evaluation(Rakoshitz, col.17, line 64-col.18, line 45, col.20, lines 15-41).

As per claim 11, the process wherein a graph is generated for each application

component that includes the application component's application component latency,

first application component latency baseline and second application component latency

baseline(Scarlat, col.5, lines 11-13, Rakoshiz, Fig.13, 14, Curely, para.0009,

0011,0056, Fig.5). Motivation to combine set forth in claim 10.

As per claim 12, the process wherein said application components include an

order component, a login component, a configure component and a help component

(Scarlat, col.5, lines 11-13).

Therefore it would have been obvious to one ordinary skill in the art at the time of

the invention to modify the teachings of Curely in view of Klassen in further view of

Rakoshitz in further view of Scarlat to include different components of a web-page for e-

commerce environment in order to determine different latency for different components

in a system.

One ordinary skill in the art at the time of the invention would have been
motivated to combine Curely, Klassen, Rakoshitz, and Scarlat, in order to provide a
system to measure the latency of many application components.

As per claims 18,19,25,26 they do not teach or further define over the limitations
in claims 8-12. Therefore, claims 18,19,25,26 are rejected for the same reasons as set
forth in claims 8-12.

Claims 3, 15, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable
over US Publication 2002/0120727 issued to Curley et al.(Curley) in view of US Patent
6,711,137 issued to Klassen et al.(Klassen) in further view of US 6,578,077 issued to
Rakoshitz et al.(Rakoshitz).in further view of admitted prior art.

Curley in view of Klassen teaches application test latency and network transport
latency(Curley, para.0016,0059, Klassen, col.3, lines 18-45) however, does not
explicitly teach as per claim 3, determining an application test latency baseline that
indicates an average of previously determined values of application test latency for a
given day and time ; determining a network transport latency baseline that indicates an
average of previously determined values of network transport latency for a given day
and time.

Rakoshitz teaches determining latency baseline that indicates an average of
previously determine values of latency for a given day and time   (col. 16 L36 to col. 17

L60, col. 17 L65 to col. 18 L50, col. 20 L15-41, fig. 13: clearly indicates the minimum,

maximum and average on a display).

Therefore it would have been obvious to a person of ordinary skilled in the art at

the time the invention was made to modify Curley in view of Klassen to determine

latency baseline that indicates an average of previously determine values of latency for

a given day and time as taught by Rakoshitz in order to indicate round trip time or delay

associated with a request, and/or bandwidth consumption to a network administrator for

performance monitoring and/or evaluation(Rakoshitz, col.17, line 64-col.18, line 45,

col.20, lines 15-41).

One ordinary skill in the art at the time of the invention would have been

motivated to combine the teachings of Curely, Klassen, and Rakoshitz in order to

provide a system of indicating round trip time or delay associated with a request, and/or

bandwidth consumption to a network administrator for performance monitoring and/or

evaluation(Rakoshitz, col.17, line 64-col.18, line 45, col.20, lines 15-41).

However, Curely in view of Klassen in further view of Rakoshitz does not disclose

the process of determining deviation of network transport latency and application test

latency and displaying the deviation.

It would have been obvious to one of ordinary skilled in the art at the time of the

invention to calculate deviation of information in order to determine the absolute

difference between one number in a set and the mean of the set for the data and

display the deviation.

One of ordinary skilled in the art would have been motivated because it would

have enabled the administrator to analyze the latencies more efficiently.

As per claims 15 and 22, they do not teach or further define over the limitations in

claim 3. Therefore claims 15 and 22 are rejected for the same reasons as set forth in

claim 3.

Response to Arguments

The Declaration filed on 5/8/07 under 37 CFR 1.131 is sufficient to overcome US

Publication No.2003/0074606 issued to Boker.

Applicant's arguments with respect to claims 1-28 have been considered but are

moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to
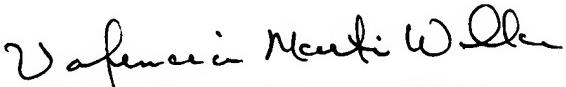
applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Backhean Tiv whose telephone number is (571) 272-

5654. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Valencia Wallace can be reached on (571) 272-3440. The fax phone

number for the organization where this application or proceeding is assigned is 571-

273-8300.

Information regarding the status of an application may be obtained from the

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published applications may be obtained from either Private PAIR or Public PAIR.

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For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Backhean Tiv
2151
7/20/07

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